

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

Capital One Financial Corporation,

Plaintiff,

v.

John A. Kanas and John Bohlsen,

Defendants.

Civil Action No. 1:11-cv-750 (LO/TRJ)

**ORDER**

Upon consideration of Plaintiff Capital One Financial Corporation's Motion for Leave to File Documents Under Seal and Defendants' Response thereto, the Court finds as follows:

1. Proper notice of this sealing motion has been given to the public through the public filing of this motion.
2. On April 25, 2012, Plaintiff Capital One Financial Corporation ("Capital One") filed its Motion for Leave to File Documents Under Seal, which sought to file under seal (i) an unredacted version of Plaintiff's Memorandum in Support of its Motion for Partial Summary Judgment, and (ii) certain exhibits attached to the Declaration of Michael S. Diamant dated April 25, 2012 ("Diamant Declaration").
3. Exhibit 20 to the Diamant Declaration is the Expert Sur-Rebuttal Report of Daniel Fischel (dated April 16, 2012), which contains confidential and commercially sensitive information concerning Capital One's customers and their accounts with Capital One.
4. Exhibits 19 and 21 to the Diamant Declaration contain excerpts from the transcripts of the depositions of Michael Slocum and James Covington, respectively, and contain

confidential and commercially sensitive information regarding Capital One's customers and their accounts with Capital One.

5. Exhibits 2, 3, and 7 to the Diamant Declaration contain excerpts from the transcripts of the depositions of Messrs. Kanas, Bohlsen, and Skorobohaty, respectively, and have been designated as Protected Material by Defendants and BankUnited and may also contain the proprietary and confidential business information of Capital One.

6. Exhibits 8, 11-17, 26-35, 37-39, 41-43, and 46-47 to the Diamant Declaration contain documents and information that have been designated by Defendants and/or BankUnited, as "Confidential" or "Highly Confidential" (collectively, "Protected Material") pursuant to the Agreed Protective Order Without Sealing Provisions (ECF No. 20).

7. Exhibit 45 to the Diamant Declaration is the Responsive Expert Report of Jonathan Macey (dated April 16, 2012), which references information designated as Protected Material by Defendants and BankUnited.

8. Exhibit 40 to the Diamant Declaration contains excerpts from the transcript of the deposition of Matthew Galligan, which has been designated as Protected Material by a non-party.

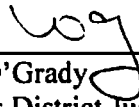
9. The Court, having considered Plaintiff's Motion for Leave to File Documents Under Seal and Defendants' Response thereto, and having reviewed the sealed and redacted material *in camera*, finds that Exhibits 2-3, 7-8, 11-17, 19-21, 26-35, 37-39, 40-43, and 45-47 to the Diamant Declaration contain confidential and commercially sensitive business information.

10. Under these circumstances, the parties' interest in protecting this confidential and commercially sensitive information outweighs the public's right of access. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000).

11. Capital One's proposal to meet and confer with Defendants and BankUnited to agree upon and publicly file appropriate redacted versions of Exhibits 2, 3, and 7 to the Diamant Declaration "constitutes the least drastic method of shielding the information at issue." *See Adams v. Object Innovation, Inc.*, No. 3:11-cv-272, 2011 WL 7042224, at \*4 (E.D. Va. Dec. 5, 2011). Accordingly, it is hereby

ORDERED that Plaintiff may file Exhibits 2-3, 7-8, 11-17, 19-21, 26-35, 37-39, 40-43, and 45-47 to the Diamant Declaration under seal. Plaintiff may also file an unredacted version of its Memorandum in Support of Its Motion for Partial Summary Judgment under seal. These filings shall remain under seal unless and until the Court enters an order unsealing them. Plaintiff and Defendants shall meet and confer regarding appropriate redactions for Exhibits 2, 3, and 7 to the Diamant Declaration, which redacted versions are to be electronically filed within fourteen (14) days of this Order.

Dated: April 25, 2012

  
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Hon. Liam O'Grady  
United States District Judge